

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARCILLE F. RUMAN,
LINDSAY C. SHELLEY
and KATHLEEN I. RATLIFF

Appeal 2007-2292
Application 10/038,796
Technology Center 3700

Decided: November 29, 2007

Before BRADLEY R. GARRIS, CHARLES F. WARREN, and
PETER F. KRATZ, *Administrative Patent Judges*.

KRATZ, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of our Decision of July 27, 2007,
wherein we affirmed the Examiner's decision to reject all the appealed
claims under 35 U.S.C. § 102(b).

At the outset, we observe that the subject Request is based on new argument that was not part of the appeal record before us at the time the above-noted Decision was rendered. In particular, the Request presents arguments with respect to our reliance on the Examiner's determination that Kuen (U.S. Patent No. 5,386,595) discloses a loop material that is stretchable, which loop material is secured to a stretchable substrate at column 14, lines 48 through 58 thereof (see, e.g., Ans. 4; Board Decision, 4-5). Appellants did not specifically address the above-identified portion of the disclosure of Kuen and the incorporated by reference documents cited therein in the Appeal Brief and Reply Brief (see the Briefs in their entirety). In this regard, it is well settled that the presentation of new argument and evidence in a request for Rehearing is untimely and inappropriate. *See* 37 C.F.R. § 41.52 (2007). An argument presented for the first time in a Request but not advanced in the Appeal Brief or Reply Brief is not properly before the Board, at least in part, because the Examiner is not afforded a timely opportunity to respond and the Board is deprived of any such response that may have been supplied by the Examiner to the belatedly presented new argument. *See In re Kroekel*, 803 F.2d 705, 709 (Fed. Cir. 1986).

Here, Requestors do not otherwise particularly point out any arguments or specifically contested matter raised in the Appeal Brief and/or the Reply Brief that the Board misapprehended or overlooked in rendering a Decision on this appeal.

In accordance with Appellants' Request, we have reconsidered our Decision in light of the Request, but we decline to effect any modification

Appeal 2007-2292
Application 10/038,796

thereof as Requestors have not stated with particularity any points that we misapprehended or overlooked in reaching the Decision. Hence, we remain of the opinion that Kuen anticipates the so rejected appealed claims.

We have granted Appellants' Request to the extent we have reconsidered our Decision, but we decline to make any change therein.

DENIED

cam

CHRISTOPHER M. GOFF (27839)
ARMSTRONG TEASDALE LLP
ONE METROPOLITAN SQUARE
SUITE 2600
ST. LOUIS, MO 63102